

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Herbert English,

Petitioner,

v.

Michael McCall, Warden,

Respondent.

No. 0:12-cv-2910-RMG

ORDER

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Magistrate Judge recommending this Court grant Respondent’s motion for summary judgment. (Dkt. No. 61). For the reasons set forth below, the Court agrees with and adopts the R&R as the order of the Court.

Background

Petitioner, a state prisoner proceeding pro se, filed this petition for a writ of habeas corpus under 28 U.S.C. § 2254. Pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(c) DSC, this matter was automatically referred to a United States Magistrate Judge for pretrial proceedings. On March 4, 2013, Respondent filed a motion for summary judgment. (Dkt. No. 23). Petitioner then filed a response. (Dkt. No. 41). The Magistrate Judge then entered an order on October 9, 2013, directing Respondent to address Grounds Five, Six, and Seven of the petition. (Dkt. No. 49). On October 23, 2013, Respondent then filed a supplemental motion for summary judgment addressing these grounds. (Dkt. No. 51). Petitioner then filed a motion for an extension of time to file a response to the supplemental motion. (Dkt. No. 55). The Magistrate Judge granted that motion, (Dkt. No. 56), but Petitioner did not file a response. The Magistrate Judge then issued the present R&R recommending the Court grant

Respondent's supplemental motion for summary judgment. (Dkt. No. 61). Petitioner did not file timely objections.

Legal Standard

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a de novo determination of those portions of the R&R to which specific objection is made. Additionally, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). This Court may also "receive further evidence or recommit the matter to the magistrate judge with instructions." *Id.*

Discussion

After review of the record and the R&R and finding no clear error on the face of the record, the Court agrees with and adopts the R&R as the order of the Court. *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005). The Court finds the Magistrate Judge thoroughly addressed each ground raised in Petitioner's petition and agrees that Respondent is entitled to summary judgment as to each ground raised therein.

Conclusion

As set forth above, the Court agrees with and adopts the R&R as the order of the Court. (Dkt. No. 61). Accordingly, the Court grants Respondent's supplemental motion for summary judgment. (Dkt. No. 51).

Certificate of Appealability


The governing law provides that:

(c)(2) A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.

(c)(3) The certificate of appealability . . . shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2253(c). A prisoner satisfies the standard by demonstrating that reasonable jurists would find this court's assessment of his constitutional claims debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. *See Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683 (4th Cir. 2001). In this case, the legal standard for the issuance of a certificate of appealability has not been met. Therefore, a certificate of appealability is DENIED.

AND IT IS SO ORDERED.


Richard Mark Gergel
United States District Court Judge

June 6, 2014
Charleston, South Carolina